

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Great Plains Communications, Inc.)
) CC Docket No. 94-129
Petition for Waiver of the)
Requirement for Local Exchange)
Carriers to Verify Inbound Requests)
of Customers Who Want to Change to)
an Affiliated Interexchange Carrier)

TO: The Commission

PETITION FOR WAIVER

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SUMMARY

Great Plains Communications, Inc. (Great Plains) requests a waiver of the requirement for a local exchange carrier (LEC) to verify inbound carrier change requests when customers seek to switch to the LEC's interexchange carrier (IXC) affiliate. Great Plains and its IXC affiliate, Great Plains Communications Long Distance, Inc., do not slam customers and do not act anticompetitively. Great Plains shows that the verification requirement: (a) imposes new costs on Great Plains, Great Plains Communications Long Distance and their customers; and (b) has an anticompetitive effect on Great Plains Communications Long Distance. By comparison, without the verification requirement: (a) customers will not be subject to slamming and Great Plains will not act anticompetitively; (b) Great Plains will be able to process customers' change requests without there being an extra cost for requests to change to Great Plains Communications Long Distance; (c) Great Plains Communications Long Distance will be on a par with its competitors vis-à-vis Great Plains's processing of inbound carrier change requests; and (d) the Commission's goals of: (i) protecting customers; (ii) encouraging competition in the IXC market and increasing the choices available to consumers - especially in rural areas; and (iii) minimizing regulatory burdens on small carriers, will be realized.

For good cause shown, the Commission should grant a waiver in these special circumstances.

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PETITION FOR WAIVER

Great Plains Communications, Inc. (Great Plains), by its attorney, and pursuant to Section 1.3 of the Commission's Rules, requests a waiver of the requirement for a local exchange carrier (LEC) to verify inbound carrier change requests when customers seek to switch to the LEC's interexchange carrier (IXC) affiliate. This requirement appears in paragraph 91 of the Order in the captioned proceeding, as modified by the Clarification Order.¹ Great Plains (a LEC) and its IXC affiliate, Great Plains

¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, para. 91 (rel. Mar. 18, 2003) [hereinafter Order], clarified by Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order]. Great Plains does not request a waiver of the requirement for a LEC to verify an inbound request from a customer that wants to change from one LEC to another LEC.

Communications Long Distance, Inc. (Great Plains Communications Long Distance), do not slam customers. This new verification requirement therefore would impose unwarranted costs on Great Plains, Great Plains Communications Long Distance and their customers. There is good cause to grant a waiver to Great Plains in these special circumstances.²

I. BACKGROUND

A. Great Plains and Great Plains Communications Long Distance

Great Plains is a small LEC that has been serving rural areas of Nebraska for decades. Long distance service is provided by Great Plains Communications Long Distance, which began to provide service in 2002. Great Plains Communications Long Distance has had some business success, and wants to ensure that, at a minimum, it can maintain a consistent penetration level as everyday churn occurs.

² A good argument can be made that the new verification requirement is not in effect because the text of the slamming rules does not require a LEC, as an executing carrier, to verify carrier change requests. This Petition for Waiver, however, is being filed out of an abundance of caution. For the sake of simplicity, this Petition refers to the verification requirement as definitely applying to Great Plains.

B. Inbound Requests to Change IXCs - Before 2003

For many years, the Commission's rules did not require LECs to verify carrier changes that result from a customer contacting a LEC directly (aka "inbound carrier change requests"). Such "carrier changes" include customers calling the LEC and asking the LEC to change their IXC. Even in the Second Report and Order released in 1998, the Commission specifically declined to alter its rules in this regard.³

Thus, suppose a customer calls a LEC named "LocalTelco." Prior to 2003, LocalTelco could change the customer's IXC without, for example, using third-party verification (TPV) (where the customer may be transferred to an independent party who confirms the change request and verifies the identity of the customer) or a written letter of agency (LOA) (which confirms the change request). This is true regardless of whether the IXC in question is affiliated with LocalTelco. In other words, no verification is required for inbound requests to a LEC from a customer who wants to switch IXCs. That is, the LEC did not need to use an LOA or TPV, for example, to verify the customer's request. Then, after the LEC informed the new IXC about the customer's switch, even the IXC did not need to verify the customer's request.

³ See Order para. 91.

C. Inbound Requests to Change IXCs - Pursuant to the New Verification Requirement

In the Order, the Commission modified this requirement. In paragraph 91, the Commission said that it would now "require verification of carrier change requests that occur when a customer initiates a call to a LEC."⁴

Verizon, BellSouth, SBC and Qwest met with Commission staff, and requested the Commission to clarify that the requirement to verify inbound carrier change requests did not apply when, for example, a customer wants to change to an unaffiliated IXC.⁵ The Commission agreed, and released the Clarification Order. There, the Commission explained that paragraph 91 of the Order does not apply when a customer wants to change to an IXC that is not affiliated with the LEC.⁶

In other words, suppose LocalTelco has an affiliate that is an IXC. If a customer were to call LocalTelco and ask to switch to LocalTelco's IXC affiliate, then pursuant to the Order and the Clarification Order, LocalTelco would need to use one of the Commission's verification procedures, such as an LOA or TPV, to verify that customer's IXC selection. (This requirement was not

⁴ Id.

⁵ Ex Parte Letter from Marie Breslin, Verizon, Mary Henze, BellSouth, Mike Alarcon, SBC, and Kathy Krause, Qwest, to Marlene Dortch, FCC, Docket No. 94-129, dated May 2, 2003.

⁶ Clarification Order para. 5.

affected by the Clarification Order.) But if the same customer were to call LocalTelco and ask to switch to an unaffiliated IXC, LocalTelco could make the change without using any Commission-sanctioned verification procedure;⁷ the unaffiliated IXC would also not need to perform any verification procedure. The IXC change would happen just as soon as LocalTelco makes the change.

D. Related Proceedings

Great Plains and many other small incumbent local exchange carriers (ILECs) believe that this new verification requirement is unnecessary and anticompetitive, as discussed further below. A group of small ILECs, including Great Plains, filed a Petition for Reconsideration requesting the Commission to eliminate the requirement.⁸ These ILECs also requested the Commission to stay the requirement pending consideration of the Petition for Reconsideration.⁹ Several of the ILECs also have filed Comments

⁷ The Clarification Order confirms that no verification is required in the latter situation. Id.

⁸ Rural ILECs Petition for Reconsideration, dated May 19, 2003; Rural ILECs Motion for Leave to File Supplement to Petition for Reconsideration, dated May 30, 2003; Rural ILECs Supplement to Petition for Reconsideration, dated May 30, 2003; Nebraska LECs Reply, dated August 8, 2003 (replying to oppositions and comments on petition).

⁹ Rural ILECs Emergency Request for Partial Stay, dated May 22, 2003; Rural ILECs Motion for Leave to File Supplement to Emergency Request for Partial Stay, dated May 30, 2003; Rural ILECs Supplement to Emergency Request for Partial Stay, dated May

on Information Collections demonstrating that the Commission has not fully considered the burden for complying with the verification requirement.¹⁰

This Petition for Waiver is being filed as an alternative to these other filings. For example, if the Commission were to grant the permanent waiver requested herein, Great Plains would not need to pursue the Petition for Reconsideration. Conversely, if the Commission were to eliminate the verification requirement, Great Plains would not need to pursue this Petition for Waiver.

II. GREAT PLAINS AND GREAT PLAINS COMMUNICATIONS LONG DISTANCE DO NOT SLAM CUSTOMERS

The purpose of all of the Commission's slamming rules is to deter slamming. Great Plains and Great Plains Communications Long Distance have spotless records in this regard. Simply put: They don't slam customers -- despite the hundreds of customers that request Great Plains Communications Long Distance's service each year and the hundreds of IXC change requests that Great Plains processes each year. Their spotless records are evidenced by:

30, 2003.

¹⁰ Rural ILECs Comments on Information Collections, dated May 28, 2003; Nebraska ILECs Comments on Information Collections, dated August 1, 2003.

- * The enclosed Declaration of Kathy H. Tripp, Director, Special Services, Great Plains, stating that she has no knowledge of Great Plains ever slamming a customer. (Attachment A.)
- * The enclosed letter from the Nebraska Public Service Commission stating that there are no slamming complaints on file against Great Plains and Great Plains Communications Long Distance. (Attachment B.)
- * The slamming reports filed at the FCC by Great Plains and Great Plains Communications Long Distance, which show that they did not slam any customers.

Also, a search of LEXIS shows that there are no FCC slamming orders involving Great Plains or Great Plains Communications Long Distance.¹¹

Many factors contribute to these spotless records. Great Plains Communications Long Distance does not use outside telemarketers. By comparison, many slamming complaints received by the FCC result from independent telemarketing operations.¹² In addition, customers of rural ILECs, such as Great Plains, receive, and expect to receive, high quality service from local customer service representatives. The customer service representatives are not penalized for taking their time in

¹¹ Search of LEXIS, FCC file, Sept. 22, 2003.

¹² E.g., AT&T v. Winback & Conserve Program, Memorandum Opinion and Order, 16 FCC Rcd. 16,074 (2001) (used independent telemarketers who slammed customers); Talk America, Order, 18 FCC Rcd. 6263 (2003) (used outside telemarketing agent); FCC Imposes \$680,000 Forfeiture Against Vista Services Corporation for Slamming, News Release, File No. EB-99-10, 2000 FCC LEXIS 5604 (rel. Oct. 23, 2000) (used independent contractors for telemarketing).

responding to questions and other requests from customers who often are their neighbors, friends and relatives. Also, the average employee of Great Plains and its affiliates has worked for those companies for 14 years. This stability attests to the employees' integrity in the past, and their interest in continuing to provide quality customer service in the future. In short, their small-town culture is manifested in careful customer care.

Great Plains' and Great Plains Communications Long Distance's spotless records in processing carrier change requests can be used to predict that they will continue to accurately process IXC change requests in the future. The Commission has often looked to past behavior to predict future actions. For example, when the Commission considered Section 271 applications, the Commission stated that the "'past and present behavior of the [Bell Operating Company] applicant' would be 'highly relevant' because that behavior provides 'the best indicator of whether [the applicant] will carry out the requested authorization in compliance with the requirements of Section 272.' "¹³ Additionally, in determining whether to grant broadcast and other

¹³ Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd. 20,599 para. 321 (1998).

wireless licenses, the Commission frequently looks to past performance to predict future behavior.¹⁴ For the same reasons, the Commission can look at Great Plains' and Great Plains Communications Long Distance's spotless records in processing carrier change requests, and conclude that the likelihood of their having spotless records in the future is almost a certainty.

In sum, Great Plains has shown that the Commission's goal of deterring slamming was realized by Great Plains even before the Commission adopted the new verification requirement. And Great Plains' past record can be used to predict that it will not slam customers in the future.

III. GREAT PLAINS AND GREAT PLAINS COMMUNICATIONS LONG DISTANCE DO NOT ACT ANTICOMPETITIVELY

While the general purpose of the slamming rules is to deter slamming, the specific purpose of the new verification

¹⁴ See National Black Media Coalition v. FCC, 775 F.2d 342, 347 (D.C. Cir. 1985); Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd. 6513 (1994) (cellular licensee eligible for renewal expectancy based on substantial service in the past); Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 2834 (1993) ("primary rationale for granting a renewal expectancy is that the licensee's record of past performance is the best available evidence for predicting its future performance").

requirement is to prevent anticompetitive behavior by LECs. According to the Commission, the LECs' affiliates are just beginning to provide interexchange service and allegedly now have incentive to switch customers to the LECs' IXC affiliates.¹⁵ But that is not a concern here. Independent LECs have been permitted to provide interexchange service for a long time, and Great Plains Communications Long Distance has been providing service for over a year. In that time, no customer has complained that their long distance service was switched to Great Plains Communications Long Distance without the customer's consent. This fact is supported by:

- * Great Plains' and Great Plains Communications Long Distance's spotless records in processing carrier change requests, as discussed above.
- * The lack of complaints from competing IXCs. Great Plains participated in the Rural ILECs' Petition for Reconsideration which addresses the verification requirement and the Commission's concerns about LECs acting anticompetitively in the future. AT&T and WorldCom responded to the Petition for Reconsideration. If they had evidence of Great Plains acting anticompetitively, AT&T and WorldCom surely would have mentioned it in their responses. But AT&T and WorldCom said nothing on that topic.¹⁶ Their silence is evidence that Great Plains has not acted anticompetitively.

¹⁵ Order para. 91.

¹⁶ AT&T Opposition at 4-5, dated July 29, 2003; WorldCom Opposition at 7-9, dated July 29, 2003.

Great Plains' record of not acting anticompetitively in the past can be used to predict that it will not act anticompetitively in the future, just as Great Plains' spotless carrier change record can be used to predict that it will not slam customers in the future. Thus, the two key goals of the slamming rules and the verification requirement - to deter slamming and to prevent LECs from acting anticompetitively - have been realized in the past, and would readily be realized by Great Plains in the future, without the imposition of the new verification requirement.

IV. THE VERIFICATION REQUIREMENT IMPOSES UNNECESSARY COSTS

Before the Commission released the Order, Great Plains did not verify inbound carrier change requests using the procedures in the Commission's verification rules for submitting carriers - for two reasons. First, Great Plains acts as an executing carrier when it processes IXC change requests. The Commission's verification rules did not require Great Plains, as an executing carrier, to verify the change requests.¹⁷ Second, Great Plains does not have any history of slamming, so additional verification was not necessary.

¹⁷ 47 C.F.R. § 64.1100.

To comply with the Commission's new verification requirement, Great Plains needs to use one of the Commission's verification procedures when it processes inbound carrier change requests only for changes to Great Plains Communications Long Distance. Thus, when Great Plains switches customers to Great Plains Communications Long Distance, Great Plains will need to bear a cost that it does not bear when it switches customers to other IXCs.

Great Plains' preferred verification method is an LOA. Most small LEC-affiliated IXCs use LOAs, not TPV - so small LECs, such as Great Plains, likely would use LOAs as well. The LOAs permit the IXC, or the LEC, to retain control of the interaction with the customer, thereby ensuring that no mistakes occur in the carrier change process. And, as shown above, the LOA process has contributed to Great Plains Communications Long Distance's spotless record.

Great Plains estimates that it may process about 900 inbound carrier change requests each year for its IXC affiliate, and that the use of LOAs would cost about \$10 per change request. Thus, the cost of using LOAs for the verification of inbound carrier change requests could be about \$9,000 per year.¹⁸

¹⁸ This \$10-per-change estimate is low. Without even considering the cost of processing LOAs, another small ILEC has estimated its carrier change costs at \$23.65 per change. Hot Springs Telephone Company Comments, CC Docket No. 02-53, dated May 23, 2002.

Great Plains could use the PIC change charge to pass on this cost to its customers. In that case, the PIC change charge would greatly exceed the safe harbor amount of \$5.¹⁹ This higher PIC change charge would apply only to customers switching to Great Plains Communications Long Distance - not to customers switching to unaffiliated IXCs.

Instead of requiring customers to pay a higher PIC change charge, Great Plains Communications Long Distance could issue credits to its new customers in the amount of the increased PIC change charge. Great Plains Communications Long Distance then would need to pay an additional \$9,000 per year to obtain new customers. This approach is unacceptable for two reasons. First, other IXCs will not incur this cost when they obtain new customers in Great Plains' service area. Second, the IXC affiliates of small LECs typically operate on small profit margins. These small IXCs pay comparatively high per-minute charges to wholesalers due to the IXCs' low call volumes. And

Similarly, the \$9,000-per-year estimate is low. In their Comments on Information Collections, Docket No. 94-129, dated May 28, 2003, the Rural ILECs estimated the cost of compliance with the verification requirement to be about \$122,275 per year for LECs serving a total of 280,000 lines. Great Plains serves about 33,500 lines. Based on the Rural ILECs' cost estimates, Great Plains' costs should be approximately \$14,600 - which is much higher than the estimate given above.

¹⁹ See Presubscribed Interexchange Carrier Charges, Order and Notice of Proposed Rulemaking, 17 FCC Rcd. 5568 (2002) [hereinafter PIC Change Charge NPRM].

the IXCs' administrative costs are likely to be higher per customer because small IXCs have fewer customers. Great Plains Communications Long Distance is no exception. The additional cost of compliance with the verification requirement cannot be borne as readily by Great Plains Communications Long Distance as it may readily be borne by much larger IXCs.

The bottom line is that regardless of whether Great Plains Communications Long Distance or the customers bear the costs directly, the verification requirement places a burden on Great Plains Communications Long Distance and its customers that is not borne by other IXCs and their customers. As such, the verification requirement is unduly burdensome and anticompetitive.

Of course, Great Plains does not have to use LOAs. It could use another verification method, such as TPV. In that case, when Great Plains handles an inbound carrier change request, it would first follow the same procedures it currently uses to ascertain whether the IXC change request is legitimate, and then, Great Plains would hand off the call to a TPV service. Thus, the TPV would not replace any of Great Plains' current procedures. It would be an extra procedure - one that would be performed solely for changes to Great Plains' IXC affiliate and solely due to the new verification requirement.

Great Plains does not foresee any benefit to using TPV, so it has not fully investigated the cost of using TPV. Nevertheless, Great Plains is aware that the Commission has estimated the cost of using TPV to be approximately \$2.625 per customer change.²⁰ If Great Plains were to process 900 inbound change requests each year for customers who want to switch to Great Plains Communications Long Distance, the total cost could be \$2,362.50. Because Great Plains would have call volumes much lower than that offered by larger IXC's, Great Plains assumes that the actual annual cost for TPV could be even higher due to higher per call charges and higher fixed monthly charges for its lower call volumes. No matter what the exact cost may be, the use of TPV would still be a cost that Great Plains and Great Plains Communications Long Distance would bear which would not be borne by other IXC's and their customers. Thus, the use of TPV would be unduly burdensome and anticompetitive, just as the LEC's use of LOAs for inbound carrier change requests is unduly burdensome and anticompetitive.

²⁰ Supporting Statement, FCC Paperwork Reduction Act Submission to the Office of Management and Budget, OMB Control No. 3060-787, at 19, dated June 11, 2003.

V. THE VERIFICATION REQUIREMENT IS ANTICOMPETITIVE

In addition to imposing new costs, the verification requirement is anticompetitive in its implementation. Consider the procedure for Great Plains to use an LOA to verify inbound requests from customers who want to switch to Great Plains Communications Long Distance. Great Plains would need to mail the LOA to the customer; the customer would review it, sign it and mail the LOA back to Great Plains; and then Great Plains would make the carrier change. Thus, the verification of a carrier change request may not be completed until a week or so after the customer calls Great Plains. By comparison, if a customer wanted to switch to an unaffiliated IXC, the change could take place immediately because Great Plains would not need to verify the request to switch to that IXC.

This difference in the processing of carrier change requests for the affiliated IXC versus unaffiliated IXCs is highlighted by the following hypothetical conversations between a Great Plains customer and a customer service representative (CSR).

SCENARIO 1

Customer: "Please change my long distance company to
BIG-IXC."

CSR: "OK. . . . The change will take effect
within 24 hours."

SCENARIO 2

Customer: "Please change my long distance company to your long distance affiliate."

CSR: "OK. I would be happy to help you with that. First, I will mail a letter of agency to you. You'll need to review it, sign it, and mail it back to us. After we receive the completed letter of agency, we'll be happy to make the change. So, in about a week, you'll be switched to our long distance affiliate."

Customer: "You've got to be kidding! I want to get rid of my current long distance company right away. Is there any way I can do that?"

CSR: "Unfortunately, if you really want to switch to our long distance affiliate, the regulatory paperwork will take about a week to turn around. But if it's more important that you switch carriers right away, we could switch you to one of the other long distance companies."

Thus, the verification requirement makes it clearly more difficult for a customer to change to Great Plains Communications Long Distance - thereby harming competition.²¹ With Great Plains Communications Long Distance being relatively new to the IXC marketplace, now is not the time for Great Plains Communications

²¹ See PIC Change Charge NPRM para. 12 (making carrier changes easy for consumers helps spur competition).

Long Distance to face unnecessary regulatory barriers to its continued success as an IXC.

VI. GREAT PLAINS MEETS THE COMMISSION'S STANDARDS FOR GRANTING WAIVERS

Pursuant to Section 1.3 of the Commission's Rules, the Commission can grant a waiver for good cause shown. Here, Great Plains has shown that the requirement to verify inbound carrier change requests for changes to its IXC affiliate is not necessary to deter slamming. Yet, verification would impose unnecessary costs, and would present a barrier to Great Plains Communications Long Distance's ability to maintain its current penetration level. Thus, there is good cause to grant a waiver.

A waiver also is supported by the particular facts of this case that make strict compliance inconsistent with the public interest.²² As shown above, strict compliance with the verification requirement would not only impose unnecessary burdens on Great Plains and Great Plains Communications Long Distance, but it would also be a barrier to Great Plains Communications Long Distance's ability to retain its market penetration. Also, Great Plains could increase its PIC change charge, but the Commission has previously acknowledged that

²² See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

higher PIC change charges are a barrier to competitive entry and the exercise of customer choice.²³ Thus, a higher PIC change charge is inconsistent with the Commission's goals of spurring competition in the IXC market and increasing the choices available to consumers - especially in rural areas.²⁴ For these reasons, the verification requirement is not in the public interest.

In deciding whether to grant a waiver, the Commission may take into account considerations of hardship and equity.²⁵ Here, the verification requirement would impose costs on Great Plains, Great Plains Communications Long Distance and their customers that are not imposed on other IXCs and their customers. Thus, the verification requirement is inequitable.

In sum, strict compliance with the verification requirement would impose financial burdens, be inequitable and

²³ PIC Change Charge NPRM para. 3.

²⁴ See, e.g., Multi-Association Group(MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Dockets Nos. 98-77 and 98-166, 16 FCC Rcd. 19,613 para. 6 (2001) (not wanting to discourage long distance competition or limit consumer choice in rural areas); Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Notice of Proposed Rulemaking, 17 FCC Rcd. 9916 para. 22 (2002).

²⁵ WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

anticompetitive - contrary to the Commission's goals in fostering competition in interexchange service in rural areas. By comparison, without the verification requirement, customers would be well-served by the careful customer service provided by small ILECs and their IXC affiliates. A waiver is appropriate in these circumstances.

VII. A WAIVER IS CONSISTENT WITH COMMISSION PRECEDENT

The Commission "is committed to continuing the examination of [its] rules and processes to ensure that small telephone companies are provided with appropriate regulatory flexibility."²⁶ In many instances, the Commission has waived its rules for small companies. For example, the Commission has waived its rules so that small LECs would: (a) not need to implement FLEX ANI because the cost would be burdensome;²⁷ (b) not need to implement telephone number portability in the 100

²⁶ Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 AND 98-166, 16 FCC Rcd. 19,613, 19,729 (2001) (statement of Chairman Powell).

²⁷ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, 13 FCC Rcd. 4998 (Com. Car. Bur. 1998).

largest MSAs until they receive a bona fide request;²⁸ and (c) have additional time to implement network changes to support four-digit carrier identification codes.²⁹ Grant of a waiver here would be consistent with this "longstanding sensitivity to the concerns of small companies."³⁰

Grant of a waiver also is supported by previous Commission decisions granting waivers of rules that were unnecessary and costly. For example, the Commission has often granted waivers of the price cap all-or-nothing rule, so that small LECs acquiring additional exchanges could remain subject to rate-of-return regulation. In those situations, the Commission determined that the goal of the all-or-nothing rule (e.g., to prevent improper cost-shifting among affiliates) would be achieved without the imposition of the rule, whereas the imposition of the all-or-nothing rule would impose unnecessary costs on the small LECs.³¹

²⁸ Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 7236 (1997).

²⁹ See Administration of the North American Numbering Plan Carrier Identification Codes (CICs), Declaratory Ruling, 13 FCC Rcd. 8687 (Com. Car. Bur. 1998).

³⁰ National Exchange Carrier Association, et al., Joint Petition for Waiver of Sections 36.611(a), 36.631(c) and 36.641(b)(3) of the Commission's Rules, Order, 5 FCC Rcd. 173 para. 21 (Com. Car. Bur. 1989).

³¹ E.g., Nemont Telephone Cooperative, Inc., Order, 18 FCC Rcd. 838 (Wireline Comp. Bur. 2003) (granting a waiver of the all-or-nothing rule because the problems it was meant to prevent did not exist, and imposition of the rule would impose regulations that

As another example, the Commission granted waivers of its rules concerning the minimum payloads for transmitters. In those situations, the purpose of the rule (i.e., to minimize frequency congestion) would be realized by the affected small LECs without application of the rule, because there was no prospect of congestion. By comparison, the strict application of the rule would increase the cost of providing service in a remote area.³² Similarly, in the case at hand, the goal of the slamming rules (i.e., to deter slamming) will be met without the imposition of the new verification requirement, whereas the application of the rule would impose unnecessary costs on Great Plains, its affiliated IXC and their customers. Just as the Commission waived the price cap rule and the transmitter payload rule for other carriers, the Commission should grant a waiver here.

VIII. A WAIVER IS CONSISTENT WITH THE ACT

Furthermore, nothing in the Communications Act of 1934, as amended (the Act), would prohibit the grant of a waiver. Section 258 of the Act states that carriers must comply with the were not suitable for a small LEC; see also All West Communications, Inc., Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Hanksville Telecom, Inc., Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc. and Qwest Corp., Order, 16 FCC Rcd. 4697 (Com. Car. Bur. 2001).

³² E.g., Wilderness Valley Telephone Co., Order, 15 FCC Rcd. 11,751 (Wireless Tel. Bur. 2000).

subscriber change verification procedures prescribed by the Commission. The statute does not state that LECs must verify inbound IXC change requests. Indeed, the Commission recently affirmed that LECs do not need to verify inbound carrier change requests for unaffiliated IXCs.³³ Thus, the Act must not require verification of inbound carrier change requests for unaffiliated IXCs. And there surely is no mention in the Act of whether the carriers involved are affiliated or unaffiliated. Thus, just as the Act does not require verification for changes to unaffiliated IXCs, it does not require verification for changes to affiliated IXCs.

A waiver would simply modify the Commission-prescribed procedures for Great Plains, and would therefore be consistent with the Act. As stated by the D.C. Circuit, "sound administrative procedure contemplates waivers. . . . [W]ith diligent effort and attention to essentials[,] administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility."³⁴ Here, customers would remain free from slamming while the Commission uses its administrative flexibility to refrain from imposing unnecessary regulations. And even if Great

³³ Clarification Order para. 5.

³⁴ WAIT Radio, 418 F.2d at 1159.

Plains were to slam a customer, Great Plains would still be required to provide just compensation in accordance with the slamming rules.

The Commission has granted many waivers of the slamming rules, as requested by Bell Companies and other LECs. In those orders, the Commission has specifically noted the terms of Section 258 of the Act, and has explained the Commission's ability to waive its rules, consistent with the Act.³⁵ There is nothing in the Act that would permit the Commission to grant these waivers to the Bell Companies but prohibit the Commission from granting the waiver requested here. Thus, just as the Commission has waived its slamming rules for other LECs, the Commission may grant a waiver here, consistent with the Act.

IX. THE WAIVER SHOULD BE PERMANENT

Great Plains requests the Commission to grant the waiver on a permanent basis. Without a waiver, the verification requirement would continue to present unnecessary and inequitable costs for the foreseeable future. Great Plains does not expect

³⁵ E.g., 2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Order, DA 03-2745 (Consumer & Govt. Aff. Bur. rel Aug. 27, 2003); Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Order, 16 FCC Rcd. 3646 (Com. Car. Bur. 2001).

any change to its service area, and Great Plains Communications Long Distance does not expect any change to its penetration level, that would warrant the termination of a waiver anytime in the future.

Great Plains is aware that the Commission has required periodic reporting as a condition of granting waivers in other situations. But there would be no need to require Great Plains to file periodic reports in this case. If, perchance, a customer were slammed by Great Plains, the customer readily could file a complaint with the Nebraska Public Service Commission or, perhaps, the FCC. Thus, there is a built-in mechanism for regulatory agencies to monitor Great Plains' carrier change activities.

Nevertheless, as a condition for the grant of a permanent waiver, Great Plains suggests that it could retain records of customers complaining about slamming (even if such complaints were against unaffiliated IXCs). These records would be made available to the Commission upon request. This requirement would be similar to that imposed in other situations where carriers must retain records and make them available upon request.³⁶

³⁶ See, e.g., Implementation of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Rcd. 15,550 (1998) (upon request by the

X. CONCLUSION

Great Plains has shown the following:

1. Great Plains is a small, rural ILEC that has been providing local exchange service for decades.
2. Great Plains's IXC affiliate, Great Plains Communications Long Distance, has been providing interexchange service for more than one year.
3. Their small-town culture and values is exhibited in their careful handling of customers requests.
4. Great Plains Communications Long Distance does not use independent telemarketers.
5. Neither Great Plains nor Great Plains Communications Long Distance has slammed any customers.
6. Great Plains has not acted anticompetitively in processing inbound carrier change requests.
7. Great Plains's preferred verification method is the letter of agency, just as Great Plains Communications Long Distance uses letters of agency.
8. The verification requirement:
 - a. Imposes new costs on Great Plains, Great Plains Communications Long Distance and their customers.
 - b. Has an anticompetitive effect on Great Plains Communications Long Distance.

Commission, carriers must provide copies of contracts for subscriber list information); Aircell, Inc., Order, 14 FCC Rcd. 806 (Wireless Tel. Bur. 1998) ("Cellular licensees providing cellular service to airborne terminals must promptly provide upon request by the Commission any information relating to any complaint of interference.").

9. Great Plains' and Great Plains Communications Long Distance's spotless records can be used to predict that the likelihood of their accurately processing carrier change requests in the future is almost a certainty.
10. Without the verification requirement:
 - a. Customers will not be subject to slamming and Great Plains will not act anticompetitively.
 - b. Great Plains will be able to process customers' change requests without there being an extra cost for requests to change to Great Plains Communications Long Distance.
 - c. Great Plains Communications Long Distance will be on a par with its competitors vis-à-vis Great Plains's processing of inbound carrier change requests.
 - d. The Commission's goals of: (i) protecting customers; (ii) encouraging competition in the IXC market and increasing the choices available to consumers - especially in rural areas; and (iii) minimizing regulatory burdens on small carriers, will be realized.

For good cause shown, Great Plains requests the Commission to grant a permanent waiver of the requirement to verify inbound carrier change requests where customers want to switch to Great Plains' IXC affiliate.

Respectfully submitted,
GREAT PLAINS COMMUNICATIONS, INC.



By

Susan J. Bahr
Its Attorney

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October 10, 2003

ATTACHMENT A

DECLARATION

I, Kathy H. Tripp, am the Director of Special Services for Great Plains Communications, Inc. Based on my experience and my review of the records of Great Plains Communications, Inc. and Great Plains Communications Long Distance, Inc., I am not aware of Great Plains Communications, Inc. or Great Plains Communications Long Distance, Inc. ever slamming a customer, or of being accused of acting anticompetitively when processing a carrier change request. In any cases where Great Plains Communications, Inc. may have been named in slamming complaints, unaffiliated interexchange carriers had submitted unauthorized carrier change requests which Great Plains Communications, Inc. effected as an executing carrier.

Signature

Kathy H. Tripp

Date

10-10-03

ATTACHMENT B

Letter from the Nebraska Public Service Commission

Nebraska Public Service Commission

COMMISSIONERS:
ANNE C. BOYLE
LOWELL C. JOHNSON
ROD JOHNSON
FRANK E. LANDIS
GERALD L. VAP

EXECUTIVE DIRECTOR:
ANDY S. POLLOCK



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Post Office Box 94927, Lincoln, NE 68509-4927
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Phone: (402) 471-3101
Fax: (402) 471-0254

NEBRASKA CONSUMER HOTLINE:
1-800-528-0017

August 15, 2003

To Whom it May Concern:

This is to serve as verification that Great Plains Communications, a rural local exchange carrier, has no slamming complaints on file with the Nebraska Public Service Commission.

In addition, the long distance subsidiary of Great Plains Communications, namely Great Plains Communications Long Distance, has no slamming complaints on file with the Nebraska Public Service Commission.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl Elton".

Cheryl Elton
Consumer Advocate